

### § 3.751

application for compensation by a veteran entitled to retirement pay constitutes such a waiver.

(Authority: 38 U.S.C. 5305)

(d) *Pension*—(1) *Improved pension*. A person specified in paragraph (a) of this section may receive improved pension and retirement pay concurrently without having to waive any portion of the person's retirement pay. In determining entitlement to improved pension, retirement pay shall be treated in the same manner as countable income from other sources.

(2) *Old-law and section 306 pension*. A person specified in paragraph (a) of this section may not receive old-law or section 306 pension and retirement pay concurrently without waiver of retirement pay as provided in paragraph (c) of this section concerning compensation.

(Authority: 38 U.S.C. 5304(a))

[29 FR 12260, Aug. 27, 1964, and 36 FR 5341, Mar. 20, 1971, as amended at 41 FR 53797, Dec. 9, 1976; 46 FR 47543, Sept. 29, 1981]

CROSS REFERENCE: Concurrent benefits and elections; general. See § 3.700.

### § 3.751 Statutory awards; retired service personnel.

Retired Regular and Reserve officers and enlisted personnel are not entitled to statutory awards of disability compensation from the Department of Veterans Affairs in addition to their retirement pay. However, under § 3.750(c), eligible persons may waive an amount equal to the basic disability compensation and any statutory award otherwise payable by the Department of Veterans Affairs.

[41 FR 53797, Dec. 9, 1976]

### § 3.752 [Reserved]

### § 3.753 Public Health Service.

Disability compensation may be paid concurrently with retirement pay to an officer of the commissioned corps of the Public Health Service, who was receiving disability compensation on December 31, 1956, as follows:

(a) An officer who incurred a disability before July 29, 1945, but retired for nondisability purposes prior to such date.

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(b) An officer who incurred a disability before July 29, 1945, but retired for nondisability purposes between July 4, 1952, and December 31, 1956.

(c) An officer who incurred a disability between July 29, 1945, and July 3, 1952, but retired for nondisability purposes between July 4, 1952, and December 31, 1956.

[26 FR 1604, Feb. 24, 1961]

### § 3.754 Emergency officers' retirement pay.

A retired emergency officer of World War I has basic eligibility to retirement pay by the Department of Veterans Affairs under Pub. L. 87-875 (sec. 11(b), Pub. L. 85-857) from date of filing application therefor after October 24, 1962, if the following requirements are met:

(a) Emergency officers' retirement pay would have been granted under Pub. L. 506, 70th Congress (Act of May 24, 1928) if application therefor had been filed before May 25, 1929.

(b) Such retirement pay would have continued to be payable under section 10 of Pub. L. 2, 73d Congress, or under section 1 of Pub. L. 743, 76th Congress.

(c) The monthly rate of retirement pay at any time between May 24, 1928 and May 24, 1929, inclusive, would have been lower than the monthly rate of disability compensation payable to the retired emergency officer.

[28 FR 72, Jan. 3, 1963]

CROSS REFERENCE: Emergency officers' retirement pay. See § 3.953(b).

### SPECIAL BENEFITS

### § 3.800 Disability or death due to hospitalization, etc.

(a) Where disease, injury, death or the aggravation of an existing disease or injury occurs as a result of having submitted to an examination, medical or surgical treatment, hospitalization or the pursuit of a course of vocational rehabilitation under any law administered by the Department of Veterans Affairs and not the result of his (or her) own willful misconduct, disability or death compensation, or dependency and indemnity compensation will be awarded for such disease, injury, aggravation, or death as if such condition